

### **REMARKS**

Claims 1, 3 and 4 are pending and under consideration in the above-identified application. Claims 2 and 5 were previously cancelled.

In the Final Office Action of June 1, 2010 the Examiner rejected claims 1, 3 and 4. No new matter has been introduced as a result of the amendments.

#### **I. 35 U.S.C. § 103 Obviousness Rejection of Claims**

Claims 1, 3 and 4 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto et al. (EP 0704921 A1) in view of Ikeda et al. (WO 01/29918; U.S. Patent No. 7,241,533 serving as English translation). Applicant respectfully traverses this rejection.

The claims require a battery that includes an anode that is made up of an anode current collector having a plurality of layers. The capacity ratio between the outer anode active material layer and the inner anode active material layer in at least one region is within a range of 0.6 to 0.8 inclusive. As discussed in the specification, secondary batteries having a capacity ratio of 0.6 to 0.8 as required by the claims demonstrate superior cycle retention rates compared to batteries having a capacity ratio of 0.8 or more. Specification, page 27. Specifically, the cycle retention rate in the secondary batteries embodied by the invention are 60% or more when the capacity is 2260 mAh or greater, whereas in the comparative examples having a similarly high capacity, the cycle retention rate is 50% or less. Specification, page 27 & Table 1.

Again, the Examiner continues to argue that the capacity ratio required by the claims is either the same as, or obvious over, the coating thickness of the electrode material mixture that is 60 to 97% of the electrode mixture on the outer side of the collector as taught by Fujimoto. Fujimoto, p. 3, lines 6-15; Office Action, p. 7. Applicant disagrees. Although a coating thickness can affect capacity, it is not the same as a capacity ratio. At best, Fujimoto establishes a

relationship between the thickness of the electrode mixture on the inner and outer side of the collector, but not an overall capacity ratio as required by the claims.

Moreover, the capacity ratio required by the claims is not obvious over the thickness range taught by Fujimoto. Prima facie obvious is established when the difference between a claimed invention and the prior art is a range or variable. *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985). This is not established here, because Fujimoto specifically teaches a coating thickness, not a general capacity ratio as required by the claims. As such, difference between the claimed invention and Fujimoto is what the ratio covers (capacity v. thickness) and the ratio range. Therefore the ratio is not obvious as the Examiner suggests.

As such, the above cited references fail either singularly or in combination with each other to teach or even fairly suggest all the requirements of independent claim 1. As such, independent claim 1 is patentable over the cited references as are dependent claims 3 and 4 for at least the same reasons. Accordingly, Applicant respectfully requests that the above rejection be withdrawn.

## II. Conclusion

In view of the above amendments and remarks, Applicant submits that all claims are clearly allowable over the cited prior art, and respectfully requests early and favorable notification to that effect.

Respectfully submitted,

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